

REMARKS/ARGUMENTS

Claims 1-35 are active in this application. Claims 6, 7, 9-13, 27-30, 33 and 34 stand withdrawn in view of the finality of the restriction imposed by the Office. Applicants reiterate their request for rejoinder of non-elected process claims and expansion of consideration to non-elected species.

The claims are amended for clarity. No new matter is believed to be added by these amendments.

The rejection under 35 USC 112, second paragraph is addressed by amendment, in part, and respectfully traversed, in part.

The term “structuring” in the claims is not indefinite in that a structuring polymer is one that provides structure to a liquid composition to which it is added. For example, as described in the specification on page 2, last paragraph, the structuring polymer can permit the formation of solid or pastes. Also, in the Examples on pages 33-34, the structuring polymer enables the formation of gelled make-up compositions.

The term “alkylenediyl” is not indefinite because the term has a well-known meaning in the chemical field. Specifically, the term relates to a ring system tethered to another ring system.

With respect to the remaining issues outlined on page 3 of the Office Action, it is believed that those issues are no longer applicable in light of the amendments submitted herein.

Withdrawal of this ground of rejection is requested.

The rejection of Claims 1-5, 8, 14-26, 31, 32 and 35 as being obvious in view of U.S. patent no. 6,051,216 (“Barr”) and U.S. patent no. 6,376,078 (“Inokuchi”) is respectfully traversed.

The pending claims in this application are directed to a composition comprising at least one structuring polymer; at least one oil selected from the group consisting of hydrocarbon-based liquid oils and silicone oils; and silicone elastomer particles comprising a silicone rubber core coated with silicone resin. As discussed on page 2, lines 12-16, the composition surprisingly provides compositions with “noteworthy cosmetic properties.” Moreover, as discussed throughout the specification, the claimed compositions, in addition to providing good cosmetic properties, are stable (see, e.g., page 1, lines 15-20). These statements are supported by the attached Rule 132 Declaration of one of the named inventors, Dr. Lu (an executed version to be provided shortly).

Turning to the cited prior art, Barr describes polysiloxane polyamides and silicone oils and Inokuchi, which is cited on page 28, line 28 of the specification is cited for the silicone elastomer particles comprising silicone rubber core coated with silicone resin. The basic premise of the rejection is set forth in the paragraph bridging pages 4-5 of the Office Action and is, in short, based on the allegation that since it was known to use the silicone elastomer particles in cosmetics and Barr describes that silicone elastomers can be added to their compositions, it would have been obvious to combine them with the polysiloxane polyamides and silicone oils in Barr.

Applicants disagree in that simply because both references mention that the components could be used in a cosmetic, the references do not suggest the specific combination claimed. Therefore, on this basis alone, the claims would not have been obvious in view of these two cited publications.

In any case, Applicants provide data in the attached Rule 132 Declaration demonstrating that compositions containing a structuring polymer, an oil and silicone elastomer particles of a silicone rubber core coated with silicone resin are more stable while

at the same time providing good textural properties when compared to compositions not containing all of these ingredients (see paragraph 4 of the Declaration).

As explained by Dr. Lu in paragraph 10 of the Declaration:

The results of these experiments demonstrated that the preparation of a composition combining a structuring polymer (using nylon-611/dimethicone copolymer as representative) and silicone elastomer particles of a silicone rubber core coated with silicone resin (using KSP-100 as representative) with oil surprisingly provides stable compositions which are suitable for cosmetic use (in terms of texture) compared to similar compositions containing only the structuring polymer. In addition, I have no reason to believe that the results obtained with nylon-611/dimethicone and KSP-100 as a representative of the structuring polymer and coated silicone elastomer would not be similar for other combinations of as defined in the claims of the present application.

Moreover, Dr. Lu explains in paragraph 11 that:

These results are important because they demonstrate that the combination of the components in the claimed composition has significant advantages as discussed above. While the structuring polymer and the coated silicone elastomer were known separately for use in cosmetics, there was not a discussion of combining these nor that in combination these two components one could obtain a composition having the stability and texture properties observed for compositions as claimed.

In view of the above, Applicants request that the rejection under 35 USC 103(a) be withdrawn.

Application No. 10/617,048
Reply to Office Action of July 13, 2005

A Notice of Allowance is also requested.

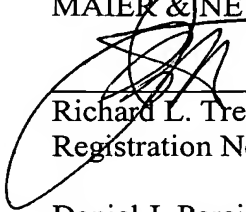
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)


Richard L. Treanor
Registration No. 36,379

JEFF M'INTYRE
Reg No 36867

Daniel J. Pereira, Ph.D.
Registration No. 45,518